

JACK RUSSO (State Bar No. 96068)  
TIM C. HALE (State Bar No. 114905)  
JOHN KELLEY (State Bar No. 100714)  
RUSSO & HALE LLP  
401 Florence Street  
Palo Alto, CA 94301  
Telephone: (650) 327-9800  
Facsimile: (650) 327-3737  
Email: jrusso@computerlaw.com  
thale@computerlaw.com  
jkelley@computerlaw.com

Attorneys for Defendant  
WESLEY MAYDER

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

VERIGY US, INC., a Delaware Corporation,

Plaintiff,

v.

ROMI MAYDER, an individual; WESLEY  
MAYDER, an individual; SILICON TEST  
SYSTEMS, INC., a California Corporation;  
and SILICON TEST SOLUTIONS, LLC, a  
California Limited Liability Corporation,  
inclusive,

Defendants.

AND RELATED CROSSCLAIMS.

Case No. 5:07-cv-04330-RMW (HRL)

**DEFENDANT'S EVIDENTIARY  
OBJECTIONS TO PORTIONS OF PAPERS  
FILED BY PLAINTIFF IN OPPOSITION  
TO MOTION FOR SUMMARY  
JUDGMENT AND FOR RULE 11  
SANCTIONS**

**Before: Judge Ronald Whyte**  
**Ctrlm: 6**  
**Date: Sept. 5, 2008**  
**Time: 9:00 a.m.**

Complaint Filed: August 22, 2007  
Trial Date: December 8, 2008 (jury trial)  
(Defendants have elected to reserve their jury  
trial rights under F.R.C.P., Rule 38)

## INTRODUCTION

Plaintiff Verigy, Inc. (“Verigy”) has attempted to oppose Defendant Wesley Mayder’s motion for summary judgment and his motion for Rule 11 sanctions with papers that patently violate F.R.C.P. Rule 56, the Federal Rules of Evidence, this Court’s Local Rules, and settled law that requires submitted evidence to be from a competent witness with personal knowledge and who demonstrates the basis of that personal knowledge in an affidavit or declaration filed with the Court. Instead of providing such evidence, Verigy relies upon wild speculation and conjecture of its counsel, unsupported by any witness.

Further, the declarations submitted by Verigy contain conclusory statements that are clearly incompetent and misleading in substantial parts, statements that are violative of Local Rule 7-5(b) and F.R.C.P. Rule 56(g). The Court should award Defendant Wesley Mayder his attorneys’ fees in bringing these evidentiary objections/motion to strike.

Mr. Mayder objects to, or in the alternative, moves to strike, the following portions of Verigy’s opposition papers on the grounds /set forth below:

Document	Basis for Evidentiary Objections
<b>Declaration of John Fowler</b> (“Fowler Decl.”), at ¶2, re statements made on information and belief	Violative of Local Rule 7-5(b), which provides that any affidavit or declaration which includes statements made on information and belief must provide the basis for such information and belief statement. Mr. Fowler simply offers a conclusory statement in that regard
Fowler Decl. at ¶3 re statement about the Mayder brothers going into business together	Irrelevant and immaterial; no showing that anything about them going into a real estate business together has anything to do with the issues in dispute in this case, and certainly does not support any claim of wrongdoing by Wes Mayder; lack of foundation
Fowler Decl. at ¶3 re statement about Wesley Mayder’s business having same street address as STS	Irrelevant and immaterial; two entities having the same street address provides no basis for concluding wrongdoing by Wes Mayder; lack of foundation

1	Fowler Decl. at ¶3 re statement about Fowler interviewing Pochowski and Wes Mayder's "active participation in STS, LLC."	Hearsay. Conclusory, lacking evidentiary detail re what "documents" were reviewed, what the so-called "active participation" was. "Active participation" does not amount to control, does not amount to establishing that Wes Mayder was ever a director or officer of STS LLC. Wes Mayder could be actively participating, though he was not, without having any knowledge of or hand in any wrongdoing. Lack of foundation.
2		
3		
4		
5		
6	Fowler Decl. at ¶5 re Fowler's alleged knowledge of the law	Irrelevant; Verigy has not pled a proper conspiracy or alter ego claim, and certainly not partnership liability; an LLC is a corporation, not a partnership
7		
8		
9	Fowler Decl. at ¶6 re ongoing discovery	Conclusory. Fowler claims that discovery has validated Verigy's suing Wes Mayder, but the exact opposite is true. Fowler fails to point to any single fact or document to substantiate his conclusory statements
10		
11		
12	<b>Declaration of Robert Pochowski</b> ("Pochowski Decl.") at ¶4, re "we never formalized any involvement."	Judicial estoppel; impeaching testimony to Verigy's position that Wes Mayder "formalized" his involvement with STS LLC while having its witness, Pochowski, testify that his involvement was never formalized
13		
14		
15	Pochowski Decl. at ¶5 re statement about Wes Mayder being a "partner" in STS	Irrelevant and immaterial; lack of foundation. An LLC is not a partnership and there is no evidence whatsoever that a partnership was ever formed, nor any claim by Verigy based on partnership liability
16		
17		
18	Pochowski Decl. at ¶5 re statement about Pochowski being "equal partners" with Romi Mayder	Irrelevant and immaterial; lack of foundation. An LLC is not a partnership and there is no evidence whatsoever that a partnership was ever formed, nor any claim by Verigy based on partnership liability
19		
20		
21	Pochowski Decl. at ¶6 re statement about Romi Mayder's having sent Pochowski a "draft partnership agreement for STS," a copy of which is attached as Exh. A to the declaration, and re his never having signed a "partnership agreement"	Irrelevant and immaterial; lack of foundation. An LLC is not a partnership and there is no evidence whatsoever that a partnership was ever formed, nor any claim by Verigy based on partnership liability; Exh. A shows on its face that it is a draft operating agreement for an LLC, not a partnership
22		
23		
24	Pochowski Decl. at ¶6 re statement about Romi Mayder and Wes Mayder having allegedly signed a "partnership agreement for STS," a copy of which is attached as Exh. B to the declaration	Irrelevant and immaterial; lack of foundation. An LLC is not a partnership and there is no evidence whatsoever that a partnership was ever formed, nor any claim by Verigy based on partnership liability; Exh. B shows on its face that it is a draft operating agreement for an LLC, not a partnership
25		
26		
27		
28		

1 2 3 4	Pochowski Decl. at ¶7 re statement about Romi Mayder and Pochowski having allegedly discussed the “partnership agreement” many times	Irrelevant and immaterial; lack of foundation. An LLC is not a partnership and there is no evidence whatsoever that a partnership was ever formed, nor any claim by Verigy based on partnership liability; Exhs. A and B show on their faces that they are draft operating agreements for an LLC, not a partnership
5 6 7 8	Pochowski Decl. at ¶7 re statement about his allegedly asking that Wes Mayder be removed from “the partnership”	Irrelevant and immaterial; lack of foundation. An LLC is not a partnership and there is no evidence whatsoever that a partnership was ever formed, nor any claim by Verigy based on partnership liability; Exhs. A and B show on their faces that they are draft operating agreements for an LLC, not a partnership
9 10 11 12	Pochowski Decl. at ¶7 re statements about partnership agreement being changed to have two levels of “membership”	Irrelevant and immaterial; lack of foundation. An LLC is not a partnership and there is no evidence whatsoever that a partnership was ever formed, nor any claim by Verigy based on partnership liability; Exhs. A and B show on their faces that they are draft operating agreements for an LLC, not a partnership
13 14 15 16	Pochowski Decl. at ¶8 re statement about the “one level of participating partnership”	Irrelevant and immaterial; lack of foundation. An LLC is not a partnership and there is no evidence whatsoever that a partnership was ever formed, nor any claim by Verigy based on partnership liability; Exhs. A and B show on their faces that they are draft operating agreements for an LLC, not a partnership
17 18 19 20 21 22	<b>Verigy’s Memorandum of Points and Authorities in Opposition to Wesley Mayder’s Motion for Summary Judgment</b> (“Opp. to WM SJ”) at p. 1, Ins. 8-10 re Wes Mayder’s involvement with STS	Irrelevant and immaterial to the extent Wes Mayder “invested” in the STS entities, as such investment does not create liability, and re his being a “member” of STS LLC, as mere membership creates no tort liability as has been alleged by Verigy, and re his being a co-conspirator, in that Verigy has failed to plead or adduce any of the evidence needed to demonstrate conspiracy; incompetent evidence regarding Wes Mayder being a “boardmember” of STS, Inc.
23 24 25	Opp. to WM SJ at p. 1, Ins. 15-16 re Romi Mayder allegedly marketing a product “very similar to Verigy’s products”	Lack of foundation; attorney speculation and argument; the Court has already found that Verigy is <i>not</i> marketing a product of the nature of FlashEnhancer; lack of competent testimony to establish the same
26 27 28	Opp. to WM SJ at p. 1, Ins. 20-21 re Verigy’s investigation having “revealed that Romi Mayder had misappropriated and was using Verigy’s trade secrets”	Lack of foundation; attorney speculation and argument; conclusory with no competent evidence to support it

1	Opp. to WM SJ at p. 2, Ins. 6-7 re Wes Mayder's alleged "operational role" in STS LLC and STS, Inc.	Irrelevant and immaterial; "operational role," even were it true, which it was not, does not create a basis for tort or vicarious liability
2		
3	Opp. to WM SJ at p. 2, Ins. re Wes Mayder's having become a member of STS LLC	Irrelevant and immaterial; mere membership in an LLC, which in fact was never consummated, does not create a basis for tort or vicarious liability
4		
5	Opp. to WM SJ at pp. 3-13 re civil conspiracy	Lack of foundation; irrelevant and immaterial. Verigy has failed to plead any facts in its Complaint that would be required for it to be able to proceed on a civil conspiracy basis as set forth in CACI 3600
6		
7		
8	Opp. to WM SJ at p. 3, Ins. 21-23 re Wes Mayder being a co-conspirator and liable for the acts of his brother Romi	Lack of foundation; irrelevant and immaterial. Verigy has failed to plead any facts in its Complaint that would be required for it to be able to proceed on a civil conspiracy basis, as set forth in CACI 3600
9		
10		
11	Opp. to WM SJ at p. 4, ln. 23-p. 5, ln. 7 re LLC required to have an operating agreement, reference to oral operating agreement being sufficient	Irrelevant and immaterial; lack of foundation. Verigy has made an admission against interest that to be valid the LLC had to have a completed operating agreement; the LLC operating agreement that Verigy is relying upon required the signature of <i>three members, including Mr. Pochowski who admits he never signed it.</i> There is no evidence of any "oral" operating agreement between Romi and Wes Mayder, and by Verigy's own assertion, no valid LLC was ever formed
12		
13		
14		
15		
16		
17	Opp. to WM SJ at p. 5, Ins. 8-17 re the signatures of the Mayder brothers on the draft operating agreement constituting evidence of a conspiracy to operate a company using Verigy's technology	Lack of foundation; incompetent evidence; irrelevant and immaterial. Mere signatures on an operating agreement constitute no evidence of a conspiracy, and there is no evidence of knowledge by Wes Mayder to use any Verigy technology. Being willing to join an LLC does not evidence anything about a conspiracy or any tortious conduct
18		
19		
20		
21	Opp. to WM SJ at p. 5, ln. 18-p. 6, ln. 3 re letter from attorney for Romi Mayder constituting evidence of conspiracy	Lack of foundation; incompetent evidence; irrelevant and immaterial; letter informing Pochowski that he was not to be included is not evidence of any wrongdoing whatsoever
22		
23		
24	Opp. to WM SJ at p. 7, Ins. 3-5 re Wes Mayder's being a director of STS, Inc.	Lack of foundation; no competent evidence that Wes Mayder was a director of STS, Inc. and all competent evidence refutes this assertion
25		
26		
27		
28		



1	Opp. to WM SJ at p. 7, Ins. 14-28 re Wes	Lack of foundation; no competent evidence
2	Mayder's being informed of threats by Verigy	that Wes Mayder was a director of STS, Inc.
3	and being a director of STS, Inc. and	and all competent evidence refutes this
4	allegedly failing to investigate	assertion; irrelevant and immaterial; as a non-
5		director or officer, Wes Mayder had no
6	Opp. to WM SJ at p. 8, Ins. 11-22 re Wes	obligation to investigate, and despite that lack
7	Mayder allegedly helping to solicit	of obligation, he did investigate to the best of
8	investments in STS, Inc.	his ability
9	Opp. to WM SJ at p. 8, ln. 25-p. 9, ln. 12 re	Irrelevant and immaterial; helping to raise
10	Wes Mayder using his driver's license to	money proves nothing regarding the elements
11	obtain a seller's permit for STS, Inc.	of any of Verigy's claims in this action, or of
12		civil conspiracy, a claim not properly pled by
13	Opp. to WM SJ at p. 9, ln. 14-p. 10, ln. 12 re	Verigy in this action
14	Wes Mayder dealing with STS, Inc.'s website	Irrelevant and immaterial; helping to obtain a
15		seller's permit proves nothing regarding the
16		elements of any of Verigy's claims in this
17		action, or of civil conspiracy, a claim not
18		properly pled by Verigy in this action
19	Opp. to WM SJ at p. 10, ln. 14-p. 12, ln. 9 re	Irrelevant and immaterial; helping his brother
20	Romi Mayder's inventor's notebook and Wes	with the STS, Inc. website proves nothing
21	Mayder's alleged involvement with such	regarding the elements of any of Verigy's
22	notebook	claims in this action, or of civil conspiracy, a
23		claim not properly pled by Verigy in this
24		action
25	Opp. to WM SJ at p. 10, ln. 14-p. 12, ln. 9 re	Irrelevant and immaterial; Wes Mayder's
26	Romi Mayder's inventor's notebook and Wes	allowing one of his employees, Jon Davidson,
27	Mayder's alleged involvement with such	to assist Romi Mayder proves nothing
28	notebook	regarding any of Verigy's claims in this
		action, or of civil conspiracy, a claim not
		properly pled by Verigy in this action
	<b>Memorandum of Points and Authorities in</b>	Irrelevant to the extent Wes Mayder
	<b>Opposition to Wesley Mayder's Motion for</b>	"invested" in the STS entities, as such
	<b>Rule 11 Sanctions</b> ("Opp. Rule 11") at p. 1,	investment does not create liability, and re his
	lns. 9-14 re Wes Mayder's involvement with	being a "member" of STS LLC, as mere
	STS	membership creates no tort liability as has
		been alleged by Verigy, and re his being a co-
		conspirator, in that Verigy has failed to plead
		or adduce any of the evidence needed to
		demonstrate conspiracy; incompetent
		evidence regarding Wes Mayder being a
		"boardmember" of STS, Inc.
	Opp. Rule 11 at p. 1, Ins. 19-21 re Romi	Lack of foundation; attorney speculation and
	Mayder allegedly marketing a product "very	argument; the Court has already found that
	similar to Verigy's products"	Verigy is <i>not</i> marketing a product of the
		nature of FlashEnhancer; lack of competent
		testimony to establish the same
	Opp. to Rule 11 at p. 1, Ins. 24-25 re Verigy's	Lack of foundation; attorney speculation and
	investigation having "revealed that Romi	argument; conclusory with no competent
	Mayder had misappropriated and was using	evidence to support it
	Verigy's trade secrets"	

1	Opp. to Rule 11 at p. 2, Ins. 11-5 re Wes Mayder's allegedly being a member of STS LLC and a director of STS, Inc.	Lack of foundation; irrelevant and immaterial; being a member of an LLC does not create tort liability even if it were true, which it is not, since, as Verigy has admitted, no operating agreement was ever finalized; no competent evidence of Wes Mayder's ever being a director of STS, Inc. and the competent evidence directly refutes this assertion
2		
3		
4		
5		
6	Opp. Rule 11 at pp. 4-13 re Wes Mayder's being in a civil conspiracy with Romi Mayder	Lack of foundation, irrelevant. Verigy has failed to plead any facts in its Complaint that would be required for it to be able to proceed on a civil conspiracy basis, as set forth in CACI 3600
7		
8		
9	Opp. Rule 11 at p. 5, Ins. 2-p. 6, ln. 17 re Wes Mayder's signing the draft operating agreement for STS LLC	Lack of foundation; incompetent evidence; irrelevant and immaterial. Mere signatures on an operating agreement constitute no evidence of a conspiracy, and there is no evidence of knowledge by Wes Mayder to use any Verigy technology. Being willing to join an LLC does not evidence anything about a conspiracy or any tortious conduct
10		
11		
12		
13	Opp. Rule 11 at p. 6, ln. 18- p. 7, ln. 9 re letter from attorney for Romi Mayder constituting evidence of civil conspiracy	Lack of foundation; incompetent evidence; irrelevant and immaterial; letter informing Pochowski that he was not to be included is not evidence of any wrongdoing whatsoever
14		
15		
16	Opp. Rule 11 at p. 7, ln. 14-p. 9, ln. 6 re Wes Mayder's allegedly being a director of STS, Inc., being informed of threats by Verigy and being a director of STS, Inc. and allegedly failing to investigate	Lack of foundation; no competent evidence that Wes Mayder was a director of STS, Inc. and all competent evidence refutes this assertion; irrelevant and immaterial; as a non-director or officer, Wes Mayder had no obligation to investigate, and despite that lack of obligation, he did investigate to the best of his ability
17		
18		
19		
20	Opp. Rule 11 at p. 9, Ins. 14-26 re Wes Mayder allegedly helping to solicit investments in STS, Inc.	Irrelevant and immaterial; helping to raise money proves nothing regarding the elements of any of Verigy's claims in this action, or of civil conspiracy, a claim not properly pled by Verigy in this action
21		
22		
23	Opp. Rule 11 at p. 9, ln. 27-p. 10, ln. 16 re Wes Mayder using his driver's license to obtain a seller's permit for STS, Inc.	Irrelevant and immaterial; helping to obtain a seller's permit proves nothing regarding the elements of any of Verigy's claims in this action, or of civil conspiracy, a claim not properly pled by Verigy in this action
24		
25		
26	Opp. Rule 11 at p. 10, ln. 17-p. 11, ln. 17 re Wes Mayder dealing with STS, Inc.'s website	Irrelevant and immaterial; helping his brother with the STS, Inc. website proves nothing regarding the elements of any of Verigy's claims in this action, or of civil conspiracy, a claim not properly pled by Verigy in this action
27		
28		

1 2 3 4	Opp. Rule 11 at p. 11, ln. 18-p. 13, ln. 16 re Romi Mayder's inventor's notebook and Wes Mayder's alleged involvement with such notebook	Irrelevant and immaterial; Wes Mayder's allowing one of his employees, Jon Davidson, to assist Romi Mayder proves nothing regarding any of Verigy's claims in this action, or of civil conspiracy, a claim not properly pled by Verigy in this action
5 6 7	Opp. Rule 11 at p. 13, lns. 11-14 re evidence of Wes Mayder's having been an "integral part" in a conspiracy with Romi Mayder to tamper with evidence	Lack of competent evidence; judicial estoppel in connection with Verigy's own opposition to motion for summary judgment by Wes Mayder in which Verigy takes the position Mr. Mayder was <i>negligent</i> , not that he intentionally was involved in tortiously damaging Verigy
8 9	Opp. Rule 11 at p. 14, lns. 8-24 re Fowler's alleged "reasonable investigation"	See objections to conclusory statements by Fowler above

### CONCLUSION

For the reasons stated above, the Court should not consider the vast majority of Verigy's opposition papers to both the summary judgment and Rule 11 motion by defendant Wesley Mayder. Verigy has opposed Mr. Mayder's motions on grounds it has not even properly pled, and its so-called evidence of conspiracy is completely insufficient to demonstrate a conspiracy even had it properly pled such a claim or doctrine.

Respectfully submitted,

Dated: July 25, 2005

By: /s/ Tim C. Hale

Jack Russo, SBN 98068  
Tim C. Hale, SBN 114905  
John Kelley, SBN 100714

RUSSO & HALE LLP  
401 Florence Street  
Palo Alto, CA 94301  
Telephone: (650) 327-9800  
Facsimile: (650) 327-3737  
Email: [jrusso@computerlaw.com](mailto:jrusso@computerlaw.com)  
[thale@computerlaw.com](mailto:thale@computerlaw.com)  
[jkelley@computerlaw.com](mailto:jkelley@computerlaw.com)

ATTORNEYS FOR DEFENDANT  
WESLEY MAYDER